Decision of Honorable Leo F. Hayes
dated November 4, 1994

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RE: JAMES GRAHAM v. NIAGARA MOHAWK POWER CORPORATION
RJI 33-94-1590

Gentlemen:

This shall constitute my letter decision in the above-entitled matter, and supplements my comments from the bench at oral argument on September 30, 1994.

The underlying lawsuit involves numerous claims by plaintiff, all flowing from plaintiff's assertion that Niagara Mohawk improperly denied the plaintiff unescorted access security clearance to the Nine-Mile Point One and Two Nuclear Power Plants.

Niagara Mohawk moved for summary judgment on an assortment of grounds. Essentially though, it contends that its actions with respect to plaintiff's unescorted access application were authorized by federal laws regulating safety and security at nuclear power plants. Furthermore, Niagara Mohawk takes the position that the plaintiff was not denied unescorted access

because of his prior criminal history, but rather because he failed on two separate occasions to respond accurately and completely to questions on its unescorted access clearance application.

Summary judgment is granted with regard to claims arising under federal statutes and regulations, as these matters have already been ruled upon by Judge Scullin of the United States District Court in related litigation.

Plaintiff's claim for interference with contract is dismissed as unsupported in law.

With regard to plaintiff's other claims, this Court is satisfied that the Nuclear Regulatory Commission approved the security plan and the various application forms used by Niagara Mohawk, and that federal law pre-empts applicable state law in this field. Even assuming arguendo that there is no pre-emption, Executive Law §296(16) provides that such inquiries by the employer would not be an unlawful discriminatory practice where "specifically required or permitted by statute".

Lastly, the affidavits and documentation submitted by the defendant support its position that it did not deny plaintiff access based upon his history of arrests, but rather his lack of trustworthiness and reliability when, after the routine F.B.I. check, it became obvious that the plaintiff was less than truthful on his certification applications.

Plaintiff's amended complaint is dismissed with prejudice, the Court has signed the proposed order submitted by defendant, and it is returned herewith.

Very truly yours,
Honorable Leo F. Hayes
Supreme Court Justice